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marriage," instead of a per stirpes distribution between two classes, viz.,—"nearest relation of testator and nearest relation of testator's widow." There are a number of decisions which afford a ground for this argument. *Everitt* v. *Everitt,* 29 N. Y. 39; *Stevenson* v. *Lesley,* 70 N. Y. 512; *Howell* v. *Knight,* 100 N. C. 254; *Dukes* v. *Faulk,* 37 S. C. 255, 34 Am. St. Rep. 745; *Kling* v. *Schnellbecker,* 107 Ia. 636; *Campbell* v. *Clark,* 64 N. H. 328, 10 Atl. 702; *Budd* v. *Haines,* 52 N. J. Eq. 488. On the other hand there are cases which are just as nearly in point as the ones above cited, which adopt the contrary view. *Young's Appeal,* 83 Penn. 59; *Bassett* v. *Granger,* 100 Mass. 348; *Ross' Ex'r* v. *Kiger,* 42 W. Va. 402; *In re Swinburne,* 16 R. I. 208; *Raymond* v. *Hillhouse,* 45 Conn. 467; *Rivenett* v. *Borquin,* 53 Mich. 10; *Records* v. *Field,* 155 Mo. 314, 55 S. W. 1021; *McLear* v. *Williams,* 116 Ga. 257. The cardinal rule to be followed in construing a will is to ascertain the testator's intention as gathered from all the language used, *Wood* v. *Ballard,* 151 Mass. 324, and doubtless these two conflicting views are to some degree reconcilable if we take into consideration the fact that the courts, in arriving at their decision in each particular case, did so in an effort to carry out the testator's intention as evinced by the whole will, instead of confining their scrutiny to any particular item. For further consideration of this question see note following *In re King's Estate,* 34 L. R. A. N. S. 945, 21 Ann. Cas. 412.

WILLS—NO UNDUE INFLUENCE BY CHILD TWELVE YEARS OLD.—In a will contest, it was alleged that undue influence had been exerted on the testator. On this point the court *held* as follows: "It will be seen that at the date of the execution of the will in question the contestee was but little past twelve years of age and therefore was not chargeable with the exercise of undue influence over his father." *Purdy's Adm'r* v. *Evans* (Ky. 1913), 160 S. W. 1071.

With this dogmatic statement the court dismissed the claim that the son had exercised undue influence over his father. The doctrine appears to be without authority. Its nearest parallel is the ancient rule of the common law that no party could testify who was under nine years of age. *Rex* v. *Traverse,* 1 Str. 700. But this has long been repudiated. "No rule defines any particular age as conclusive of incapacity," WIGMORE, EVIDENCE, 505. There is no precise or fixed rule as to the time within which infants are excluded from giving evidence; but their admissibility is to be collected from their answers to questions propounded by the court. *Rex* v. *Brazier,* 1 Leach Cr. L. 237. All modern decisions seem to declare intelligence and not age the proper test. *State* v. *King,* 117 Ia. 848, 91 N. W. 768. The holding of the court receives no support from the law of torts since infants of tender years are liable for their torts. *Huchting* v. *Engel,* 17 Wis. 230, 84 Am. Dec. 741; nor from the law of crimes since the common law rule is that between the ages of seven and fourteen an infant is presumed incapable of committing a crime but the contrary may be shown. *Allen* v. *U. S.,* 150 U. S. 551; nor from the law of contracts since the general rule is that the contracts of an infant are voidable. *Lansing* v. *Mich. Central R. Co.,* 126 Mich. 663.